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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 C. TERESA MARTIN,

9 Plaintiff,

10 vs.

11 NEVADA DIVISION OF INSURANCE,

12 Defendant.
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3:13-cv-00047-RCJ-WGC

ORDER

14 Plaintiff C. Teresa Martin has sued the State of Nevada's Division of Insurance in this
15 Court for age and sex discrimination. Defendant has moved to dismiss the claim for age
16 discrimination under the Age Discrimination in Employment Act ("ADEA"). The Court grants
17 the motion.

18 The Court generally has no jurisdiction to entertain a suit against the State of Nevada or
19 one of its departments by one of its citizens absent the State's consent. *See* U.S. Const. amend.
20 XI; *Hans v. Louisiana*, 134 U.S. 1 (1890). Nevada has explicitly refused to waive its Eleventh
21 Amendment immunity from suit in federal court as a general matter, *see* Nev. Rev. Stat.
22 § 41.031(3), and the State did not remove the present case from state court, so waiver does not
23 apply in the present case. Although § 5 of the Fourteenth Amendment gave Congress the power
24 to abrogate the States' Eleventh Amendment immunity with respect to discrimination suits in
25 some circumstances, *see Fitzpatrick v. Bitzer*, 427 U.S. 445, 455–56 (1976) (Title VII), Congress

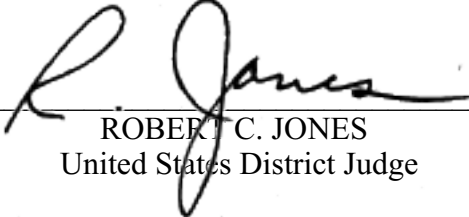
1 did not exercise that power in passing ADEA, because “Congress had virtually no reason to
2 believe that state and local governments were unconstitutionally discriminating against their
3 employees on the basis of age,” *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 91 (2000). The pre-
4 *Kimel* decisions from inferior courts that Plaintiff cites in opposition are no longer persuasive.

5 **CONCLUSION**

6 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 12) is GRANTED.

7 IT IS SO ORDERED.

8 Dated this 26th day of April, 2013.

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11 ROBERT C. JONES
12 United States District Judge
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